Supreme Court, U.S.
FILED
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(1)

NO.

In The

SUPREME COURT OF THE UNITED STATES

David K. Kalan pro sec, Petitioner

v.

City of St. Francis, Respondents

On Petition for Writ of Certiorari
United States Court of Appeals 7th Cir and
United States District Court Eastern District of Wisconsin

PETITION FOR WRIT OF CERTIORARI

David K. Kalan pro sec,
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Milwaukee WI. 53207
(414) 482-4531

19pp

QUESTIONS PRESENTED

I did not personally stand before Judge Tesmer, give up my right to Jury trial.

Can the District Court and the Court of Appeals 7th Cir sanction the violation of that jury right, rule in conflict with Supreme Court in New York v Hill No. 98-1299 ?

I am denied credit because of the outstanding judgment due to the improper dismissal of jury trial

Is the denial of motion for injunctive relief cruel and unusual punishment?

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LIST OF PARTIES

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In The

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below

OPINIONS BELOW

The order and judgment of Hon. Michael S. Kanne, Circuit Judge, Hon. Ilana Diamond Rovner, Circuit Judge and the Hon. Ann Claire Williams Circuit Judge Court of Appeals for the 7th Circuit. Order. Judgment appears in Appendix A to the petition and is unpublished.

The order of Chief Judge J.P. Stadtmueller, United States District Court Eastern District of WI Judgment appears in Appendix B and is unpublished.

JURISDICTION

The date of Court of Appeals decision is July 9. 2002. A copy of decision appears in appendix A. No petition for rehearing was filed in my case. The Jurisdiction of this court is invoked under 28 U.S.C. 1254(!).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances Amendment 1

In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause to the accusations, to be confronted with the witness against him, to have compulsory process for obtaining witness in his favor, and to have Assistance of Counsel for his defense. Amendment 6

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States! Nor shall any state deprive any person of life liberty, or property without due process of law! Nor deny to any person within its jurisdiction the equal protection of the laws. Amendment 14

STATEMENT OF CASE

I did not personally stand before Judge Tesmer, on the record, and give up my right to Jury demand criminal court case # 1900469. District Court for the Eastern District of WI rule that I gave up my right to jury citing Res judicata in an unrelated case 91CV007608 before Judge Burns. United State Court of Appeals 7th Circuit affirmed that ruling. District Court based its decision on the fact that I had the benefit of counsel.

Counsel cannot waive statutory policy, nor can the state court waive WI statues. See Brooklyn Savings bank v O'Neil 324 U.S. 697 704 (1945) "Every state official, high and low is bound by the 14th Amendment including officials of the executive and judicial." 924 16B Am Jur 2d 522.

It is clear that the District Court and the Court of Appeals 7th Circuit ruling is in conflict with Supreme Court Case New York v Hill No 98-1299 certain fundamental can not be waive.

I requested the District Court and the Court of Appeals 7th Circuit for injunctive relief from the outstanding judgment of $37, 375.00. Review of Muckey v Pierce Supreme Court of WI June Term 1854 "To dismiss and appeal for such cause, leaving the judgment of the justice in force is erroneous."

If this Supreme Court would review it's decision Bell v Hood 327 U.S. 678 (1946) Mr. Justice Black states pg 3(3) "And it is established practice for this court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution (4) and to restrain individual state officers from doing what the 14th Amendment forbids the state to do (5) Moreover, where federal protected rights have been invaded, it has been the rule from the beginning that courts will adjust their remedies

so as to grant the necessary relief (6) and it is also well settled that where legal rights have been invaded, and a federal statue provides for a general right to sue for such an invasion, federal courts may use any available remedy to make the good the wrong done.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

The improper dismissal of my jury right not only violates my right, but society rights are affected. Dismissal of jury trial are governed by WI stats and protected by State and Federal constitutions.

"It is true that a right conferred on a provide party, but affecting the public interest may not be waive or released if such waiver or release contravenes the statutory policy." Brooklyn Savings Bank v O'Neil 324 U.S. 697 704 (1945)

CONCLUSION

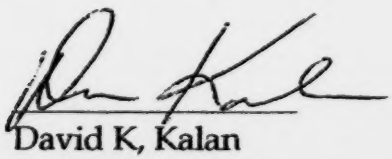
The City of St. Francis seize, my property for satisfaction of the $37,375.00 judgment but can not provide me with necessary documentation of satisfaction to clear my credit report because of the procedure violations in dismissing my jury demand . Judge Burns ordered the seizer of my property yet satisfaction of judgment belongs to Judge Tesmer.

Judge Burns reopen under section WI stat 806.07(1) (h) Extraordinary circumstances stating (transcript Feb.6, 1996 pg 3 line 9-12)..."back in 1991, was not really the product of his informed consent" Also stating "the appeal before Judge Tesmer, is still dangling and it's really her case."

It is cruel and unusual punishment to leave in force an outstanding judgment preventing me from clearing my wrongful credit report, and gaining credit form the banks. The 14th Amendment guarantee me "equal protection of the law" that protection protects the public rights.

The petition for writ of certiorari should be granted.

Respectfully submitted.



David K, Kalan
September 3, 2002

PROOF OF SERVICE

I David K. Kalan do swear or declare that on this date September 03, 2002, as required by Supreme Court Rule 29. I have serve the enclosed Petition for a writ of certiorari on each party to the above proceeding or the party's counsel, and on every other person required to be served, by the depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with return receipt first class postage prepaid.

The names and address of those served are as follows

Attorney Richards
Vlasak & Britton S.C.
735 N. Water St 16th Floor West
Milwaukee WI. 53202

I declare under penalty of perjury that the fore going is true and correct.

Executed on September 03, 2002

APPENDIX A

United States Court of Appeals ch
For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 18, 2002
Decided July 9, 2002

Before

Hon. MICHAEL S. Kanne, *Circuit Judge*

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

Hon. ANN CLAIRE WILLIAMS, *Circuit Judge*

DAVID K. KALAN, Plaintiff-Appellant, No. 02-1870 v. CITY OF ST. FRANCIS, Defendant-Appelee.	] Appeal from the United] States District Court for] the Eastern District of] Wisconsin.]] No. 92 C 1306]] J. P. Stadtmueller,] Chief Judge.

Upon consideration of the **MOTION FOR INJUNCTIVE RELIEF**, filed on June 6, 2002, by the pro se appellant,

IT IS ORDERED that the motion is **DENIED**.

IT IS FURTHER ORDERED that the judgment of the district court is summarily **AFFIRMED**.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DAVID K. KALAN,

Plaintiff,

Case No. 92-C-1306

CITY OF ST. FRANCIS,

Defendant,

ORDER

On January 25, 2002, *pro se* plaintiff David K. Kalan ["Kalan"] filed a motion pursuant to Federal Rule of Civil Procedure 60(b)(5) and (6) seeking relief from judgment from United States Magistrate Judge Robert L. Bittner's July 26, 1993 order. In his one-page motion, Kalan respectfully demands that the court order the Municipal Court of the City of St. Francis to reopen a case that is almost a decade old and release Kalan from a $37, 375.00 judgment. Kalan also argues that the court remove a $1000 sanction imposed by Magistrate Bittner in his July 26, 1993 order. Kalan's entire argument in support of his motion consists of one sentence: Kalan claims that he was denied a jury trial and that the outstanding judgment affects his credit.

BACKGROUND

Beginning in November, 1989, Mr. Kalan received numerous citations from the City of St. Francis ["City"] relating to the maintenance of properties that he owned. When the City could not informally resolve the ordinance violations, it commenced an action against Kalan. On August 27, 1990, City Municipal Judge Michael D. Novak found Kalan guilty on thirty-one counts of City maintenance code violations and fined him $30,500.00 plus court costs for a total judgment against Kalan of $37,375.00. Kalan, represented by counsel, appealed the municipal court judgment to

Milwaukee County Circuit Court, seeking a jury trial. Kalan's appeal, Case No. 1-900469, was assigned to Milwaukee Circuit Court Judge Louise M. Tesmer.

On March 31, 1991, the City brought a separate action against Kalan in Milwaukee County Circuit Court alleging that Kalan violated a restrictive covenant and terms of a building permit on one property and violated a building permit and lacked an occupancy permit on another property. The City's action, Case No. 1-CV-007-608, was assigned to Milwaukee County Circuit Judge George A. Burns, Jr.

Judge Burns conducted a settlement conference with the parties. Kalan, represented by counsel, and the City reached a stipulated settlement in which both Case No. 1-900469 and Case No. 91-CV-007-608 would be dismissed subject to certain conditions. In accordance with the stipulation, Judge Burns entered judgment in Case No. 91-CV-007-608 on October 28, 1991, and Judge Tesmer granted the City's motion to dismiss in Case No. 1-900479 on November 21, 1991.

More than a year later, Kalan appears to have a changed his mind regarding the stipulation that dismissed both cases. On January 22, 1993, Kalan filed a pro se motion to reopen the judgment entered in Case No. 91-CV-007-608 which was denied on February 1, 1993. On December 7, 1992, Kalan also filed an action in federal court alleging that the City violated his constitutional rights. On July 26, 1993, Magistrate Judge Bittner held that plaintiff's action was barred under the doctrine of res judicata and granted the City's motion for summary judgment as well as awarding sanction against kalan in the amount of $1,000.

ANALYSIS

Kalan seeks relief from judgment under Federal Rule of Civil Procedure 60(b)(5) and (6). Kalan bears the burden of showing that he is entitled to relief from judgment under Rule 60. *See, e.g., Money Store, Inc. v. Harriscorp Finance,* Inc., 885 F.2d 369, 372 (7th Cir. 1989). Moreover, motions made under Rule 60 must be made within a reasonable time. *See* Rule 60(b).

Kalan presents no evidence, analysis, or scrap of argument that entitles him to relief. Kalan states that he was denied a jury trial, but fails to mention that he stipulated to a judgment

dismissing both actions while he was represented by counsel. Kalan offers no evidence which would show that his consent in dismissing the actions was ineffective. Examining the record, Kalan appears to imply that Judge Burns reversed his earlier judgment on February 6, 1995. Kalan, however, does not identify the proceeding in which this occurred or submit affidavits or transcripts to substantiate the assertion, nor does Kalan explain how such an order from Judge Burns entitles Kalan to relief in this court. In other words, Kalan does meet his burden to provide sufficient information for this court to conclude that Kalan is entitle to relief from judgment.

The court also finds that Kalan has not brought his motion within a reasonable time. If Kalan knew or should have known that Judge Burns reversed his earlier judgment on February 6, 1995, Kalan provides no reason why he waited to bring this current motion until years later. Kalan provides no reason for his significant delay in seeking relief from judgment.

One final reason that Kalan's motion must be denied is his failure to establish any element to show that he is entitled to injunctive relief. *See Nalco Chemical Co. v. Hydro Technologies, Inc.*, 983 F.2d 801 (7th Cir. 1993) (stating necessary elements for injunctive relief).

The court will not grant the City's request for sanctions, but the court warns Kalan that any further frivolous motions will be met with significant sanctions from the court.

Accordingly,

IT IS ORDERED that Kalan's motion for relief from judgment and for injunctive relief be and the same are hereby **DENIED**.

Dated at Milwaukee, Wisconsin this 25th day of March, 2002.

BY THE COURT:

/s/_____

J.P. Stadtmueller
Chief Judge